

## **REMARKS**

Applicants respectfully request consideration of the subject application as amended herein. This Amendment is submitted in response to the Office Action mailed April 6, 2005. Claims 2, 6, 13, 26, 31 and 32 have been withdrawn. Claims 1,3-5,7-12,14-25 and 27-30 are rejected. In this Amendment, Claims 5, 8, 16-18, and 29 have been withdrawn.

Applicant has withdrawn Claims 5, 8, 16-18, and 29 because the Examiner stated that there is insufficient antecedent basis for the limitation "...through the first dielectric film to define a cleaving plane" because the limitation is drawn to the non-elected Species III (Figures 3A-3F). Applicant respectfully traverses.

Applicant has also amended the Specification in paragraphs [0022], [0039] and [0048] to correct the errors. This amendment does not add new matter. The paragraph has been amended to say CVP.

### **35 U.S.C. §112 (2<sup>nd</sup> paragraph)**

The Examiner has rejected claim 5, 8, 16-18 and 29 under 35 U.S.C. § 112, second paragraph. The Examiner rejected claims 5, 16 and 29 for failing to provide proper antecedent basis. Applicant has withdrawn these claims.

### **35 U.S.C. §102(e)**

The Examiner has rejected claims 1, 3, 5, 7-12, 16-25, 27, 29 and 30 are rejected under 35 U.S.C. §102(e) as being anticipated by Yonehara International Publication (Application No. WO 2004/100268, hereinafter "Yonehara").

Applicant respectfully submits that Yonehara does not qualify as a prior art under 35 U.S.C. §102(e) to anticipate claims 1, 3, 5, 7-12, 16-25, 27, 29 and 30. Under U.S.C. §102(e), Applicant is entitled to a patent unless:

(e) the invention was described in - (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language; or

The Examiner cited Yonehara as a 102(e) reference. Yonehara has an International Filing Date of April 28, 2004 and an International Publication Date of November 18, 2004.

Applicant's filing date is August 21, 2003.

Under MPEP 706.02(f)(1)'s instruction on how to apply the particular statute, "for a patent and a U.S. Application: §102(e) date is the international filing date or an earlier filing date for which a benefit is properly sought" (MPEP, page 700-38). Further, the MPEP instructed, "consider benefit claims properly made under §119(e) to U.S. provisional application, §120 to U.S. nonprovisional applications, and §365(c) involving International Applications. Do not consider foreign priority claims.

Also under MPEP 706.02(f)(1), it is instructed that to fall under §102(e) prior art, the publication must meet three conditions: (a) an international filing date on or after November 29, 2000; (b) designated the United States; and (3) published under PCT Article 21(2) in English. Then, the International Filing Date is a U.S. Filing date for prior art purposes under 35 U.S.C. §102(e) (MPEP, page 700-27).

Therefore, Yonehara date is its International Filing Date: April 28, 2004. Yonehara's International Filing Date of April 28, 2004 does NOT precede Applicant's filing date of August 21, 2003. Yonehara is thus not a prior art under 35 U.S.C. §102(e).

**35 U.S.C. §103(a)**

The Examiner has rejected claims 4, 15, and 28 under 35 U.S.C. §103(a) as being unpatentable over Yonehara International Publication (Application No. WO 2004/100268, hereinafter, "Yonehara").

As discussed above, Yonehara does not qualify as a prior art to Applicant's invention.

If the Examiner finds any remaining impediment to the prompt allowance of these claims that could be clarified with a telephone conference, Applicant respectfully requests the Examiner to contact Mimi Diemmy Dao at (408) 720-8300.

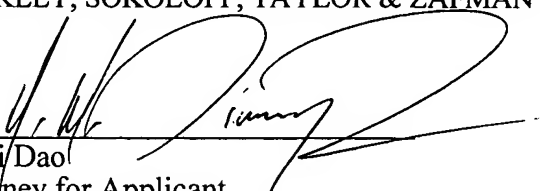
**Deposit Account Authorization**

Authorization is hereby given to charge our Deposit Account No. 02-2666 for any charges that may be due.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

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